

**DETERMINATION AND FINDINGS  
FOR AWARD OF A SOLE SOURCE CONTRACT**

**CONTRACT NO:** DCKA-2016-C-0500

**CAPTION:** Continuation of Design Review and Construction Field Verification Services for the Virginia Ave. Tunnel and Roadway Reconstruction Project

**PROPOSED CONTRACTOR:** CH2M Hill, D.C., P.C. (CH2M)

**PROGRAM AGENCY:** District Department of Transportation

**AUTHORITY**

D.C. Official Code § 2-354.04, 27 DCMR 1304, 1700 and 1701

**FINDINGS**

**1. MINIMUM NEED**

The Government of the District of Columbia, Department of Transportation (District or DDOT) has a continuing and immediate need for design review and construction field verification services for the Virginia Avenue Tunnel and Roadway Reconstruction Project. The period of performance shall be from May 26, 2016 through October 30, 2018.

**2. ESTIMATED FAIR AND REASONABLE PRICE**

Not-to-exceed \$1,839,539.00 of funding provided by CSX Transportation, Inc. (CSX), based on the projection of the remaining amount of the work (labor and materials), using the historical project cost as a baseline. CSX is funding the project pursuant to an agreement between the District and CSX; no federal or District funds are being used.

**3. FACTS JUSTIFYING AWARD OF A CONTRACT ON A SOLE SOURCE BASIS**

(a) The design and construction of the Virginia Avenue Tunnel project is an ongoing project being performed by CSX as a design-build project. CH2M has been providing the required program management services pursuant to a task order issued under Contract DCKA-2011-C-0241 for Program Management Services for projects falling under the Anacostia Waterfront Initiative umbrella (AWI Program Management contract). The AWI Program Management contract was awarded competitively for a base period of two years and three, one-year options. All options were exercised, and the final option period is set to expire on May 25, 2016. The contract permits work under task orders issued prior to the expiration of the contract to continue beyond the expiration date of the contract. Task orders issued under the AWI Program Management contract are typically

funded either with a combination of District funds and federal aid funds provided by the U.S. Department of Transportation, Federal Highway Administration (FHWA), or by third parties, such as CSX.

(b) In accordance with the Oversight and Stewardship Agreement between the District and FHWA, as well as Section 451(d)(3) of the District of Columbia Home Rule Act and Section 202(h) of the Procurement Practices Reform Act, the award of the AWI Program Management contract as well as the resulting task orders required the prior approval of FHWA, but not the prior approval of the Council of the District of Columbia. Even task orders funded entirely by third parties, if they are issued under the rubric of the AWI Program Management contract, require prior FHWA approval. The work under the task order is approximately 50% complete.

(c) FHWA has informed the District that it has concluded that these services did not properly belong under the rubric of the AWI Program Management contract, and has further informed the District that it will not concur with the District's continuing to receive these services by CH2M under the AWI Program Management task order beyond the expiration date of the contract, May 25, 2016. Thus, the District needs to continue to receive these services beyond May 25, 2016 by means of another contractual mechanism.

(d) CH2M is the only source that can complete the services that it commenced under the task order. Any re-compete of these same services would require a brand-new, stand-alone competition and ramp-up period for any new contractor, a period that the District has estimated would be approximately six months. Going without these services for that period would impose a significant risk of project delay; the services that CH2M provides on a daily basis are extremely complex, including design and submittal reviews, permitting support, management of traffic inspections, and support to CSX public outreach, as well as field verification activities related to construction that impacts public safety, public transportation and District physical facilities. The physical, legal and reputational risks to the District in failing to have a contractor managing the many design, construction, environmental issues that are likely to continue to arise are significant.

(e) For example, as of this date, CH2M has issued 108 non-conformance reports (NCR) to other contractors on behalf of the District. The District required continuity of services for management and oversight of the contractors' responses to the NCRs with all necessary follow-up. In addition, the contract services involve complex traffic management issues. Continuity is needed to understand the implications of multiple permits and changing traffic control plans. Also, because the performance of the contract services by CSX necessarily causes inconvenience and hardship to District residents, given that work is performed in public areas in the middle of several neighborhoods (including excavations that take place in District residents' front yards) the District has conducted and will continue to conduct multiple public meetings with affected residents concerning the traffic, parking and noise implications, as well as the nighttime activities, and dust associated with the project, and needs the personnel from CH2M experienced

and knowledgeable about these specific matters to assist in these activities. Also, there have been multiple legal actions involving the Project, which has also been the subject of several hearings by the Council of the District of Columbia. The “fast track” for the work to be completed can afford no delays.

(f) Effective knowledge transfer to any new contractor, in the middle of a very labor-intensive project, would be challenging at best, and at a minimum would require having both contractors on the job at the same time for a ramp-up period, a period the District is unable to fund given that CSX is funding the project and therefore no District funds have been allocated for paying a second contractor.

(g) These services have already been competed, in that the AWI Program Management contract was competed, and these services were obtained by task order under that contract. The necessity to continue services on a sole-source basis is not due to lack of advance planning by DDOT, as it planned to have CH2M perform these services to completion when it issued the task order, and could not have anticipated that FHWA would determine afterwards that the scope of the task order did not, in its opinion, relate sufficiently to the AWI Program Management contract.

(h) A market survey was not conducted, given the circumstances described above.

#### **CERTIFICATION BY AGENCY DIRECTOR**

I hereby certify that the above findings are correct and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leif A. Dormsjo  
Director

#### **CERTIFICATION BY CONTRACTING OFFICER**

I have reviewed the above findings and certify that they are sufficient to justify the use of the sole source method of procurement under the cited authority. I certify that a notice of intent to award a sole source contract was published in accordance with 27 DCMR § 1304 and that no response was received. I recommend that the Chief Procurement Officer approve the use of the sole source procurement method for this proposed contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steven H. Wishod  
Contracting Officer

### **DETERMINATION**

Based on the above findings and in accordance with the cited authority, I hereby determine that it is not feasible or practical to invoke the competitive solicitation process under either Section 402 or 403 of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code §§ 2-354.02 or 2-354.03). Accordingly, I determine that the District is justified in using the sole source method of procurement.

---

Date

---

George A. Schutter III  
Chief Procurement Officer